

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY
REHABILITATION REVIEW PANEL**

In the Matter of the QRC Intern
Registration of Michael E. Anderson

**RECOMMENDATION FOR
DISMISSAL**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on March 14, 2000 at the Office of Administrative Hearings, Minneapolis, MN.

Rory H. Foley, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, MN 55103-2106, appeared on behalf of the Rehabilitation and Medical Affairs Unit of the Department of Labor and Industry (the Department). Joseph Osterbauer, Attorney at Law, 400 3rd Avenue North, Minneapolis, MN 55401, appeared on behalf of Michael E. Anderson.

In this case, the Department denied Mr. Anderson's Application for Approval and Registration, Rehabilitation Consultant Intern, because Minn. Rule 5220.1400, subp. 3 requires applicants for such registration to have a baccalaureate degree, which Mr. Anderson does not yet have. After opening statements, it was clear that Mr. Anderson's appeal was based upon a claim that the rule is arbitrary and capricious as applied to him. Mr. Anderson has a two year associate degree in nursing and a two year associate degree in education and has worked as an RN for a physician and for a nursing home. He is currently working on his baccalaureate degree.

The Administrative Law Judge reviewed Minn Rule 5220.1400 and then advised the parties that it appeared that the rule specifically requires a baccalaureate degree as a pre-requisite to registration as a QRC Intern, and that there appears to be no waiver provision or other language that would allow a different interpretation or otherwise avoid application of the clear language of the rule. The Administrative Law Judge further advised the parties that neither he nor the Rehabilitation Review Panel had the authority to declare a rule to be facially arbitrary and capricious and that that could be done only by a court, either upon an appeal from this matter or by a separate declaratory judgement action. After consultation with his client, Mr. Anderson's counsel advised the Administrative Law Judge that Mr. Anderson did not wish to incur the expense of court proceedings and wished to withdraw his appeal. The hearing was then adjourned.

Based upon the withdrawal of the appeal, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Rehabilitation Review Panel order that the appeal of Michael E. Anderson be dismissed.

Dated this 23rd day of March 2000.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped, One Tape.